Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Exchange Carrier Association, Inc.	)	
Tariff FCC No. 5, Transmittal No. 952	)	WC Docket No. 02-356
	)	

REBUTTAL COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

Pursuant to the Order released by the Federal Communications Commission (the FCC) on November 8, 2002,[1] the United States Telecom Association (USTA)[2] respectfully submits its rebuttal comments to the oppositions filed on December 16, 2002, in the Direct Case of the National Exchange Carrier Association, Inc. (NECA) submitted on December 2, 2002 (Direct Case).[3] NECA filed tariff Transmittal No. 952 (Transmittal 952) to become effective September 14, 2002. The FCC suspended NECA's tariff for five months, pending an investigation to determine whether the provisions proposed in Transmittal 952 are unjust or unreasonable in violation of section 201 of the Communications Act of 1934, as amended. Transmittal 952 proposes an increased allowance for uncollectibles, which would result in higher traffic-sensitive switched and special access recurring rates. Transmittal 952 addresses a revenue shortfall for the current test period of July 1, 2002 to June 30, 2003 (Test Period), and is intended to allow NECA members to protect against financial risks not addressed in NECA's earlier security deposit

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[1] *In the Matter of National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal 952*, WC Docket No. 02-356, Order, DA 02-3100 (rel. Nov. 8, 2002).
[2] USTA is the nation's oldest trade association for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

proposal in Transmittal 951, WC Docket 02-340 (Transmittal 951).[4] USTA files these rebuttal comments in support of NECA's Direct Case because it believes that the measures detailed in Transmittal 952 are reasonable and just and should be implemented to protect NECA incumbent local exchange carriers (ILECs)[5] from the risk of uncollectibles. USTA urges the FCC to grant NECA's request in Transmittal 952.

DISCUSSION

Financial turmoil has dramatically changed the telecommunications industry. It is likely that more and more telecommunications companies will declare bankruptcy and that uncollectibles will continue to increase. NECA has experienced an unprecedented increase in uncollectibles. For 2002, NECA's uncollectibles are already about 1,000% higher than they were in 1998, and NECA expects them to be over 2,300% higher once all member companies have reported their uncollectibles to the pool.[6] NECA projects uncollectible revenues of $15,000,000.00 greater than the amount originally included in its current Test Period, and, in response, proposed the tariff revisions in Transmittal 952 as a means of maintaining the authorized rate of return.[7] Transmittal 952 would increase switched and special access rates based on an increase in the interstate revenue requirement of $15,000,000.00 for the remainder of the current Test Period. USTA believes that NECA members should be able to rely on estimates of uncollectibles that are based on a changed industry, not the industry as it was in the

[3] *In the Matter of National Exchange Carrier Association, Inc., Tariff No. 5*, *Transmittal 952,* WC Docket No. 02-356, Direct Case of the National Exchange Carrier Association, Inc. (Dec. 2, 2002) (NECA Direct Case).
[4] National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal 951 (Aug. 21, 2002).
[5] NECA's members include over 1,000 ILECs.
[6] NECA Direct Case at 4.

past. NECA's Direct Case demonstrates that the increase in the allowance for uncollectibles and resulting access rate increase are just and reasonable.

USTA believes that Transmittal 952 is a necessary complement to Transmittal 951. Transmittal 951 was intended as a longer-term means of reducing uncollectible revenues for NECA members by allowing NECA members to obtain deposits from customers likely to default in order to limit potential losses from default. Transmittal 952 is necessary because security deposits alone will not adequately protect NECA members from losses for the current Test Period.

The significant increase in uncollectibles is not attributable to normal business fluctuations brought on by the bankruptcy filings of a few large interexchange carriers but rather is symptomatic of the financial difficulties burdening the entire interstate access business. USTA fully supports NECA's justifications for Transmittal 952 set forth in the Direct Case because now more than ever, ensuring continuity of service by limiting the financial fallout from failing interstate access providers is of utmost importance. This is particularly challenging because not only must NECA companies find ways to continue delivering service to bankrupt carriers, they must find ways to do so without being dragged down with financially-troubled carriers. Unlike carriers that have the option to refuse to provide service, NECA members are required by law to provide service upon demand. Forced to provide service to bankrupt or uncreditworthy customers in increasingly turbulent financial times, ILECs necessarily face increased risk of non-

[7] NECA Direct Case at 3.

payment. Including reasonable allowances for uncollectibles in rates protects the financial health of NECA ILECs as well as their ability to serve customers.

In its opposition to the Direct Case, Sprint argues that apart from the WorldCom, Inc. (WorldCom) and Global Crossing Ltd. (Global Crossing) bankruptcies, NECA carriers face only normal market fluctuations associated with economic downturns and are, therefore, adequately protected by existing collectibles allowances and the currently-authorized rate of return.[8] AT&T argues that NECA carriers and ILECs in general are protected from the risk of nonpayment by existing tariff provisions that allow them to collect security deposits from carriers who have no established credit or who have a history of non-payment.[9] USTA disagrees. The rash of recent bankruptcies are sure to have enormous long-term and far-reaching effects. USTA concurs with industry analysts who find that there has been a significant and permanent change in the market that cannot be characterized as a normal market fluctuation. According to the Telecommunications Risk Management Association (TRMA), the increase in uncollectibles is not just a short-term blip, but a phenomenon that began over five years ago.[10] Others have concluded that the cash drain on telephone companies is greater now than in the past, and any increase in uncollectibles is damaging because of what they characterize as the increased "cash burn" required by capital expenditures (some of which subsidize competitors' entrance into the

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[8] *In the Matter of National Exchange Carrier Association, Inc., Tariff FCC No. 5*, *Transmittal No. 952*, WC Docket No. 02-356, Sprint Corporation Opposition to Direct Case (Dec. 16, 2002) at 3.
[9] *In the Matter of National Exchange Carrier Association, Inc., Tariff FCC No. 5*, *Transmittal No. 952*, WC Docket No. 02-356, AT&T Corp. Opposition to Direct Case (Dec. 16, 2002) at 2.
[10] *See* TRMA web site at www.trmanet.org. TRMA was formed in September 1997 with the stated goal of bringing telecom risk management professionals together to understand and cooperate to prepare members to deal with the industry's uncollectibles issues.

local market).[11] These commentators see no end in sight to this cash drain.[12] For these reasons, USTA, like NECA, believes that the increase in uncollectibles is part of a long-term structural change in the market that warrants a permanent increase in the allowance for uncollectibles such as that proposed in Transmittal 952.

USTA urges the FCC to recognize that it would be a serious miscalculation to force healthy NECA member carriers to suffer financial hardship in an attempt to salvage bankrupt or financially unstable carriers. NECA estimates that the total common line and traffic sensitive uncollectible revenue for WorldCom and Global Crossing alone in 2002 will be more than $70,000,000.00 when all of its member companies have fully reported.[13] In addition, NECA estimates that the total impact of the Global Crossing bankruptcy on interstate access revenues for 2002 will be about $14,000,000.00, and that for WorldCom will be about $60,000,000.00.[14] Other major companies are teetering on the edge of bankruptcy. For these reasons, tariff changes are needed to mitigate the losses NECA companies reasonably expect from industry failures.

Those filing in opposition to Transmittal 952 have found fault with the increased allowance for uncollectibles proposed by NECA because they want NECA companies to shoulder the risk of lost payments in financially uncertain times. In order to ensure the continued ability of NECA companies to serve their local communities as required by law, USTA asks the FCC to act expeditiously to approve Transmittal 952. Even if the FCC does not approve the specific increases proposed in Transmittal 952, it nonetheless must recognize that NECA

[11] *See, e.g.,* Scott Wooley, *Bad Connection*, Forbes (Aug. 12, 2002).
[12] *Id.*
[13] NECA Direct Case at 4-5.

companies should not be forced to bear the entire risk of future bankruptcies. NECA companies, as well as other ILECs, need commercially reasonable means to insulate themselves from heretofore unimagined and unprecedented financial turmoil in the telecommunications industry. These companies must be permitted to take steps to reduce the risk of nonpayment, thereby ensuring their own viability and that of the telecommunications industry in general.

Respectfully submitted,

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[14] *Id*. at 6.

CERTIFICATE OF SERVICE

I, Indra Sehdev Chalk, hereby certify that a copy of the foregoing ***Rebuttal Comments of the United States Telecom Association*** was distributed via U.S. Mail on this 23rd day of December 2002 to the attached service list.

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